

C O P Y

in 279
in opinion

409--1

1954

September 15

His Excellency Governor Hugh Gregg
and The Honorable Council
State House
Concord, New Hampshire

Dear Sirs:

At a meeting of the Governor and Council held this date, the advice of this office was sought with respect to the request of the Industrial School made under date of September 2, 1954 for authority to make certain expenditures out of the proceeds of the sale of the Union Street property. The one expenditure relates to the payment of four months rental of the quarters on the property occupied, after the sale, by the farm manager and his family. The other would provide funds for the installation of an electric hot water heater in the farm manager's cottage at the School.

While the Trustees of the Industrial School might themselves have sold the real estate in question, they chose, apparently, to ask the Governor and Council to exercise their supervisory authority. R.L. c. 463, ss. 1 and 2, as amended by Laws 1953, c. 205; see also letters to the Governor and Council from the Industrial School under dates of April 22, 1954, June 21, 1954, and July 20, 1954 in the files of the Secretary of State. The deed was executed by the Governor and Council, an act which that body was authorized to do by virtue of R.L. c. 14, s. 5.

In authorizing the sale the Governor and Council, on June 29th, 1954 voted

" . . . that the proceeds of said sale be placed in the Land Fund of the Industrial School, the use of which to be taken up with the 1955 Legislature."

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Thereafter it appears that this limitation was modified; on July 30, 1954, the Governor and Council authorized the Trustees to expend from such proceeds the sum of \$184.71, "to defray the cost of sale and survey".

The facts of the present request from the Industrial School would justify a finding by the Governor and Council that the rental under consideration was reasonably an incidental expense to the advantageous selling of the property. No reason is perceived why they may not further modify the limitation prescribed in the resolution of June 29, 1954 in order to allow the payment of such expense.

In similar manner, the Governor and Council may release to the jurisdiction of the Trustees a sum from the proceeds sufficient to install the heater; the Trustees would make the expenditure under their power to invest proceeds of sales of property "in physical plant of the institution". (c. 463, s. 1)

In conclusion it is our belief that under the circumstances the approval of the Governor and Council is necessary before expenditures may be made from the proceeds of the Union Street property, especially in view of the resolution of June 29, 1954. In the present case we believe that the Governor and Council may properly grant such approval.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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